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CASE NO.: 07-145

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES J. TITTLE
Petitioner

vs.

MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,
Respondents

PETITION FOR REHEARING ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UNITED STATES OF APPEAL FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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PETITIONER FOR REHEARING

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioner states that he has no parent companies or nonwholly owned subsidiaries.

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PETITION FORM REHEARING

(Sup. Ct. R. 44.2)

Appellant presents its petition for rehearing of the above-entitled case, and, in support of it, respectfully shows:

REASON WHY A REHEARING SHOULD BE GRANTED

Prior to petitioner's ruling in the NINTH CIRCUIT COURT OF APPEALS there existed the "treating physician" rule. In some circuits the treating physicians' rule was binding on the fact finder (the Administrative Law Judge (ALJ)), Jones v. Sullivan 949 F.2d 57, 59 (2d Cir. 1991); and Barnett v. Barnhard, 381 F.3d 664, 666-667 (7th Circ. 2004).

BRIEF STATEMENT OF THE PETITION

Prior to petitioner's Ninth Circuit of Appeals ruling

the Ninth Circuit Court of Appeals allowed the ALJ to discount the treating physician opinions for the non-treating physician opinions, Nguyen v. Charter, 100 F.3d 1462, 1463-1465 (9th Cir. 1996).

Due Process can be invoked when there is an utter lack of rational justification, and the fact finder's acts are arbitrary, Williams v. Charter, 98 F.3d 490, 491(9th Cir. 1996).

Since there were two new cases that came along discussing all the issues in the case at bar, with the states made above, a rehearing of the decision in this matter is in the interest of justice because:

There are two new cases which were decided after the petitioner had submitted his PETITION FOR WRIT OF CERTIORARI, and petitioner had no knowledge of their existence. These cases have several of the same points of

law as the petitioners case at bar. Therefore, these two cases should be considered in this case for uniformity in case law. Also, by granting a rehearing and writ of certiorari in petitioner's case, the confusion in the courts, their decisions, and courts cases may be reduced. This would serve in the best interest of the public and justice.

1. On October 1, 2007, this court denied the petitioner's petition for writ of certiorari without any opinion.

2. There was no principal ground or grounds cited in the court's denial for petitioner for writ of certiorari. After petitioner filed his petition, there was two cases on point and should be considered for rehearing and granting writ of certiorari.

In Magistrate Judge Andrew J. Wistrich's, report in Petition's original petition for writ of certiorari, Appendix E

pages 2and 3, Judge Wistrich speaks of proper notice by first class mail only by the Social Security Administration, and he further agrees that this notification by first class is a constitutional issue.

In his objections to these judicial conclusions, petitioner disagreed, at all times, petitioner claimed that notice by first class mail was improper. Petitioner further claimed that he nor his attorney received notice by First Class Mail, and that notice by first class mail did not meet Procedural Due Process under the federal constitution and federal laws.

In one of these recent Ninth Circuit decision, the Ninth Circuit agreed that service by First Class mail was ineffective.

Again, Magistrate Judge Wistrich in his report claimed that the administration law judge's decision was

proper and the petitioner was not disabled.

Petitioner disagreed with Judge Wistrich report. Petitioner claimed that the administrative law judge's decision violated the "treating physician rule".

In a more recent Ninth Circuit opinion, the Ninth Circuit seemed to reverse itself. It stated that Due Process is violated when the "treating physician rule" is violated.

In the recent immigration case of Sembiring vs. Gonzales (Cited as 2007 DJDAR 12957)(9th Cir. Aug. 27, 2007), plaintiff argued that she never received notice of the change in hearing date and therefore, was not present at the hearing and a order removing her from this country was issued. She appealed and her petition was granted with remand. In the Sembiring case, notes 2, 3, and 4 clearly state the grounds for over turning denial to reopen her case and grant remand. The following cases was found on

Westlaw site, which deals with no service of notice or receipt of mail, all in the Ninth Circuits jurisdiction:

SHEPARD CITATION DISCUSS THE CASES BELOW

A. Chaidez v. Gonzales, 486 F.3d 1079, 1084 (Notes 2,and 3)(9th Cir. May 17, 2007)

B. Duran-Madriles v. Gonzales, 178 Fed.Appx 758, 759 (Notes 2, 3, and 4)(9th Cir. May8, 2006).

There are a number of cases cited in which service by regular mail was not received. There should be an extensive examination of service by regular mail to see if it should be halted and the use of certified mail for the Due Process protection of the public at large. As in the Sembiring case, the petitioner (plaintiff Tittle) had no reason not to appeal or show up for any hearing. Therefore, his case should have been reopen at the time of his hearing

as indicated in the tapes from the hearing by ALJ. The reason for petitioner's hearing was to continue his disability and to reinstate his past Social Security Disability claim.

Judge Wistrich did not discuss the complete medical records of petitioner in his report and his recommendation, he fails to completely address one of the basic illnesses stated in the original petition for writ of certiorari. The case of Orn below, clearly states the new requirement for ALJ or subsequent party looking over the records, and making any future decision or report for others to follow, and or granting or denying complaint or claims for disability.

The second new case to be considered in this rehearing petition is Orn v. Astrue 495 F.3d 625, 625-627 (9th Cir. 2007)(Filed July 16, 2007). Is this case, the parties failed to discuss all the claimant's medical records, and the ALJ refused to give credit to attending physicians

medical records (Petitioner or Plaintiff). In Orn 495 F.3d 625, note 2, states the following as it pertains to the petition case at bar:

> "---, a reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence. Social Security Act sections 205(g), 1631(c)(3), 42 USCA sections 405(g), 1383(c)(3)."

In 495 F.3d 625, note 3, states (paraphrased):

> A review court of appeals review only the reason provided by the ALJ and may not affirm the ALJ on grounds not relied upon. Social Security Act section 205(g), 1631(c)(3), 42 USCA, sections 405(g), 1383(c)(3).

In 495 F.3d 625, note 4, states:

> "A consulting physician's opinion that a claimant for social security disability benefits could stand and walk for six hours in an eight-hour workday did not constitute substantial evidence contradicting the opinion of the claimant's treating physicians and thus, the

ALJ, in determining whether the claimant was disabled, was required by regulation to give controlling weight to the treating physician's opinions ---."

In 495 F.3d 626, note 6:

"---, ALJ was still required by regulation to give deference to treating physicians' opinions, since those opinion were support in the record and consistent with each other. 20CFR, section 404.1527."

In 495 F.3d 626, note 8:

"An ALJ in social security disability case is not required to believe every allegation of disabling pain or other non-exertional impairment; however, to discredit a claimant's testimony when a medical impairment has been established, the ALJ must provide specific, cogent reasons for the disbelief."

In 495 F.3d 627, note 14 states:

"When an ALJ's reasons for rejecting the social security disability claimant's testimony are legally insufficient and it is clear from the record that the ALJ would be required to

> determine the claimant disabled if he credited the claimant's testimony, the court of appeals remands for a calculation of benefits."

Both cases noted above were decided after petitioner had filed his Petition For Writ of Certiorari. This is the first opportunity for the petitioner to bring these cases to the court's attention. Petitioner believes they are on point and should be considered and petitioner's writ of certiorari should now be granted.

3. The ruling in the case at bar come as a great surprise to petitioner. Petitioner had presented his petition for writ of certiorari very carefully, so as to cover all crucial issues in this case. Again, petitioner was unaware of the two cases above until after filing his initial petition for writ of certiorari. The two cases above cover the crucial issues in the case at bar.

4. Petitioner was not granted any opportunity to over

come any mistakes he may have made in his petition nor was there any real reasons cited or stated for the courts denial for petition of writ of certiorari.

5. These cases above cover the same crucial issues in other circuit courts of appeal and the case at bar.

A. The case of Sembiring v. Gonzales cover the issue of not receiving notes of change of hearing date by First Class mail very will. When the party served by mail gave notice of not receiving their notice by mail, shifts the burden to the other party to prove the oppose party did receive the First Class Mail and provided proof of service was complete.

B. The case of Orn v. Astrue covers the issue of failure to fully disclose all medical records to the court for a fair hearing and gave petitioner his DUE PROCESS RIGHTS under the 5th amendment to the United States

Constitution. The case also states the ALJ must give credit to the claimants' medical doctors, the claimant's testimony and any non medical person with knowledge of claimants medical problems, Jones v. Sullivan, 949 F.2d 57, 59 (2nd Cir. 1991).

6. A rehearing tightly and squarely focused on the issues ruled upon in the cases of Sembiring v. Gonzales and Orn v. Astrue and apply their ruling to this case, so as fair hearings will come about. It is a matter of fundamental fairness to petitioner and would not unduly burden the court.

CONCLUSION

For the reason just stated, Charles J. Tittle, petitioner urges that this petition for rehearing be granted, and that, on further consideration, the Petition For Writ Of Certiorari be

granted.

Dated: October 21, 2007

Respectfully Submitted

CHARLES J. TITTLE, In Pro Se

CERTIFICATE OF PETITIONER

I, Charles J. Tittle, In Pro Se, certify that this Petition For Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court rule 44 of the Rules of Court.

CHARLES J. TITTLE, In Pro Se